

Approved - 2/19/04

**CHARTER REVIEW COMMISSION**  
**Wednesday, February 11, 2004 – 7:30 p.m.**  
**6<sup>th</sup> Floor Front Conference Room**  
**Council Office Building**

**Minutes**

**Commission Members Present:**

Kenneth Muir, Chair

Barbara Smith Hawk, Vice Chair (via phone)

Julie Davis

Mollie Habermeier

Cheryl Kagan

Javier Miyares

Sylvia Brown Olivetti

Robert Skelton

Shelton Skolnick

Randy Scritchfield

**Commission Members Absent:**

Michael McKeehan

**Staff:**

Joe Beach, Assistant Chief Administrative Officer

Carol Edwards, Legislative Services. Coordinator

Justina Ferber, Legislative Analyst

Marc Hansen, Chief, Division of General Counsel, Office of the County Attorney

Sonya Healy, Legislative Analyst

**Guests:**

Karl Aro, Maryland Department of Legislative Services

Wayne Goldstein, Representative

Montgomery County Civic Federation

Rich Parsons, Montgomery County Chamber of Commerce

Dale Tibbitts, Representative

Montgomery County Civic Federation

---

Chairman Muir called the meeting to order at 7:35 p.m.

Mr. Muir introduced Karl Aro, Executive Director of the Maryland Department of Legislative Services to the Commission. Mr. Aro was invited to discuss the advantages and disadvantages of having Council districts aligned with State legislative districts and to comment on the number of signatures necessary to amend the Charter verses changing legislation.

Mr. Aro commented that getting a constitutional amendment is not an easy thing to do in Maryland. He stated that the House of Delegates generally only takes up this issue every other year (the 2<sup>nd</sup> and 4<sup>th</sup> year of the term) to coincide with the election cycle. He also noted that the Governor does not have to sign constitutional amendments. Mr. Aro stated that since the County has a population of nearly 900,000, it seems like a low threshold amount to only require 10,000 signatures to change the Charter. He suggested that the Commission evaluate any change in relation to the number of signatures required for a referendum. The Commission should look at the percentage of voters required for a referendum.

Mr. Muir noted that Ms. Kagan had volunteered to look at the issue and see if there was any enthusiasm for it in Annapolis this year. Ms. Kagan replied that she had talked with a few legislators and there was no intent to introduce legislation this year.

Mr. Aro reminded the Commission that the bill introduction deadline is within the next week and after that all bills have to go to the Rules Committee, which is another hurdle to get a bill to the floor.

Mr. Muir commented that another issue the Commission has been evaluating is whether the growth of the County means that it is time to restructure the Council. Some people think that an 11 member Council would reduce the number of constituents that district members would represent and create more accountability and responsiveness. There is also the question of whether the Council should continue to have 4 at-large and 5 district members. Mr. Muir asked Mr. Aro to comment on this issue.

Mr. Aro responded that obviously if you have 5 district representatives for 900,000 people, this amounts to approximately 180,000 people per district. A State senator currently represents approximately 112,000 people. Congressional districts are around 600,000 people, so the County is reaching approximately one-third the size of a Congressional district.

He noted that there are other issues to consider with any type of change to the Council size and structure; for instance, redistricting and how it will be accomplished. The County is fortunate now because all of its legislative districts are contained within the County's boundaries. It has not been this way in the last 20 years and there is no guarantee that situation will remain this way in the future (notwithstanding the Court of Appeals decision last June that you could only cross County lines if it were absolutely necessary to take care of overages that the County cannot comply with – the one person, one vote requirements).

On the issue of aligning Councilmanic districts with Legislative districts, Mr. Aro noted that there are two issues to think about: (1) going to a 8-3 scheme would work now, but there is no guarantee that it will work in 2012; (2) if the Commission were to tie Councilmanic districts to legislative districts, this would in effect turn local representation over to the General Assembly and the Governor. In Maryland, the Governor puts the redistricting plan together and the Court of Appeals may ultimately get to decide where boundaries lie. Mr. Aro urged the Commission not to tie Councilmanic districts to legislative districts. He noted that in terms of population standards, the districts are large enough to easily deal with what has been the de facto one person, one vote situation. He also stated that municipal redistricting is also an issue. The Commission probably would not want to split representation of municipalities between districts, if it can be avoided.

Chairman Muir noted that the same thing must be happening in Annapolis that is happening in the County. The State population keeps growing, but there are constraints in the number of senators, delegates, and legislative districts.

Mr. Aro responded that the Constitution of Maryland mandates 47 legislative districts, 1 senator and 3 delegates from each. He noted that it's not how the County grows or doesn't grow, but instead the key is how the County grows in relationship to other counties. The County may have a very large increase in population, but when compared to other jurisdictions it may not translate into much.

Mr. Skolnick asked Mr. Aro if any projections are done as far as future growth; and, how far in advance it will be known whether Montgomery County will qualify for 8 or 9 districts, assuming the County is growing faster than the State.

Mr. Aro responded that 100,000 people would need to be added above and beyond the average growth rate. The State Office of Planning has a website that shows the population projections at the county level.

Mr. Skelton commented that it is conceivable that if Howard and Frederick Counties outpace Montgomery County in terms of growth, the County could lose a district.

Mr. Aro replied that it could, but he does not think it will shift that much.

Ms. Olivetti asked if there could be changes in the law before the next redistricting happens.

Mr. Aro replied that there could be changes. Basically the process is governed by the Maryland Constitution, which is the problem with tying Councilmanic districts to legislative districts. There may also be court cases that will have an effect on redistricting as with the last election.

Ms. Kagan asked what would happen in 2010, if the County gets part of a district and the Commission recommends tying Councilmanic districts to legislative districts. She also asked how it would work if a partial district were drawn across county lines.

Mr. Aro replied that the whole point is that it doesn't work. If the Commission leaves the districts at-large, and there isn't a whole district, what would you do? Moving at-large districts into other districts is possible, but the Charter says that the districts have to be coterminous. So the only fair way would be to have a portion of a vote. This type of arrangement is just asking for litigation.

Mr. Miyares asked if any group, for example the Civic Federation, is actively looking at tying Councilmanic districts to legislative districts. Mr. Tibbitts commented that the Civic Federation is not looking at tying Councilmanic districts to State legislative districts.

Mr. Skolnick asked if there is any move to increase the number of legislative districts beyond 47 due to the growth of the State.

Mr. Aro replied that there are no proposals on increasing the number of legislative districts.

## **II. Discussion of issues**

### **A. Executive Veto**

Mr. Hansen presented language drafted to clarify the timing of an Executive veto, Section 208 of the Charter. This language would clarify potential ambiguities in how time is measured and when the Executive has to act on legislation enacted by the Council. The Executive has to

approve or disapprove the legislation and if he does neither then the Bill becomes law after a certain number of days have lapsed with the Executive taking no action.

The questions arose as to how the days were counted under the present Charter language. It was unclear, for example, when the Executive had ten days to approve or disapprove legislation and whether counting started when the Council delivered the bill to the Executive or when the legislature enacted it. The draft language developed by Mr. Hansen and Mr. Faden makes it clear that the Executive has 10 days after the legislation is delivered to him to approve or disapprove the legislation. If the Executive takes no action, it becomes law on the 11<sup>th</sup> day after the Executive receives it. The language also authorizes the Council, by law, to decide whether to count intervening weekends or non-business days or holidays in this process.

The Executive branch and Legislative branch are in agreement with the language on the Executive veto.

Chairman Muir asked for a vote on the following veto language:

Upon the enactment of any legislation by the Council, [it] the Council President shall [be delivered] within three days deliver it to the County Executive, who within ten days [thereafter] after receiving it shall approve or disapprove it. If the [County] Executive disapproves such legislation, [it] the Executive shall [be returned] return it to the Council [within three days after the Executive disapproves it] within ten days after receiving it with the reasons for the disapproval stated in writing. Not later than 60 days after receiving the Executive's message of disapproval, the Council may, by the affirmative vote of six members, enact legislation over the disapproval of the [County] Executive. Any legislation which has been neither approved nor disapproved by the [County] Executive shall become law on the [fourteenth] eleventh day after [enactment] the Executive receives it. The Council may by law further specify how any period of time mentioned in this Section is measured.

**A motion was made to recommend amending Section 208 of the Charter as provided above. The new language was reviewed and approved (10-0).**

#### **B. Councilmember positions full- or part-time jobs**

The Commission reviewed draft language to amend the Charter to provide that Councilmember positions are full-time jobs for the purpose of determining compensation. Three alternative positions were presented. Alternative one was originally discussed at the previous meeting. Alternative one states that membership on the Council shall be considered a full-time position for the purpose of determining compensation. Alternative two states that each member of the Council shall devote full time to the duties of the office and shall not participate in any substantial private occupation for compensation. (See attached list of alternatives for more detail.)

Mr. Scritchfield asked for the reasoning behind these alternatives.

Ms. Davis stated that Alternative two was language that was crafted as a result of a previous discussion with the goal of making Council employment similar to the requirements of the Executive. The concern with this alternative was that the language for the Executive is absolute, with full-time employment being a requirement and no outside employment allowed. There was discussion that with respect to Councilmembers, the door should be left open for some types of outside employment. Ms. Davis also noted that at the last meeting Mr. Hansen and Mr. Faden submitted language for a third alternative that gave the Ethics Commission the authority to review outside employment of Councilmembers.

The Commission discussed limiting full-time employment for compensation purposes because the ultimate goal was to provide guidance to the Compensation Committee when they deliberate about the appropriate salaries for public officials. Alternative one gives this direction and does not involve review by the Ethics Commission because there is no limit on outside employment.

A motion was made to vote on the full-time/part-time language, but the motion was later withdrawn. The Commissioners discussed when a final vote should be taken. The Commission agreed to take votes on several issues at the meeting and delay other votes until the following meeting.

At this point in the meeting, the Chair acknowledged Mr. Rich Parsons, President of the Montgomery County Chamber of Commerce, who asked to speak to the Commission. Mr. Parsons commented that the current Council size seems about right. He sees no reason to change the size of the Council. He noted that in his view, there should be more, not less at-large representation. More district representation would create problems with parochialism and bog down the decision making process. He also stated that the current system, where the Council appoints the Planning Board is not effective. There needs to be shared power between the Executive and the Council on these important appointments. He also stated that the Charter is silent on whether the Council is a full-time or part-time position because the role of the Council was always intended to be part-time. There has been a gradual shift with increased micromanagement of day-to-day operations of County Government. The Executive is supposed to be responsible for this type of oversight, not the Council. He noted that the Council should remain part-time.

Ms. Hawk asked Mr. Parsons if the testimony he was presenting was on behalf of himself or on behalf of the Chamber of Commerce.

Mr. Parsons replied that the Chamber of Commerce planned to vote on the testimony the following day.

Chairman Muir asked Mr. Parsons to submit the Chamber's proposal in writing, once approved.

### **C. Councilmember positions full- or part-time jobs**

Commissioners returned to the discussion of the three alternatives concerning the full-time Council employment.

**A motion was made and seconded to approve Alternative 1. The motion passed 9-1.**

Subsequent to the vote, Mr. Beach said that the Executive would prefer putting a period after the word position and not include the language “for purpose of determining compensation.

Mr. Skolnick asked Mr. Beach to submit the Executive’s view in writing and he would include this in the Commission’s minority report on this issue.

### **D. Number of Signatures required for Charter amendments.**

Mr. Muir asked Commissioners what the consensus of the group was on this issue.

Ms. Olivetti made a motion that the Commission agree to take no position at this time, since there is no movement on this issue in Annapolis. **The motion was seconded and approved 10-0.**

### **E. Ficker Proposals**

The Commission agreed to hold the vote on the size and structure of the Council and the Ficker tax cap proposal for the next meeting.

The Commissioners agreed to begin discussing the Ficker proposals.

Mr. Hansen explained the Ficker proposals related to the tax cap and term limits. Under the current process, the Council can only raise property taxes above previous year’s taxes. The Ficker amendment would eliminate the Council’s ability to override a soft property tax cap which was passed by the voters in the early 1990s.

Mr. Ficker’s second proposal involves term limits. This proposal would amend Section 105 of the Charter to limit any member of the Council and the County Executive to three consecutive terms in office.

Chairman Muir asked for a motion to recommend that the voters disapprove the Ficker proposal related to term limits. Ms. Kagan made a motion to disapprove the Ficker proposal on term limits.

Mr. Skelton stated that he favored limiting the County Executive to a three term limit but not the Council.

Ms. Olivetti, Ms. Kagan, and Ms. Hawk all agreed that term limits are not necessary because the voters have the power to remove a representative from office during the election process.

Mr. Skolnick commented that he is in favor of term limits.

Ms. Kagan's motion was seconded. Mr. Muir called for a vote to recommend that the voters disapprove Mr. Ficker's Charter amendment on term limits. **The Commissioners voted 8-2 against the term limit proposal.**

Chairman Muir asked Ms. Kagan to write about this issue in the Commission's final report.

The Commission continued the discussion of the Ficker amendment dealing with the tax cap. Mr. Beach commented that the Finance Department has prepared projections saying that the County would lose \$1.6 billion if this amendment passed. He noted that he will bring a representative from Finance to discuss this at the next meeting. The Commission agreed to table this issue until the next meeting.

The Commission agreed to discuss issues surrounding the structure of the Council on February 19th. Mr. Muir noted that the Commission will determine how much progress is made at the February 19th meeting before scheduling a meeting on March 11. The March 18 is needed to review what has been written for the final report.

The meeting adjourned at 9:20 p.m.